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UNITED STATES OF AMERICA	)	
	)	
	)	<b>DEFENSE REQUEST FOR</b>
	)	<b>WITNESS</b>
v.	)	
	)	<b>(Professor Tim McCormack)</b>
	)	
DAVID M. HICKS	)	8 October 2004
	)	

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The Defense in the case of the *United States v. David M. Hicks* requests the following witness for the 01 November 2004 motion hearing at Guantanamo Bay and in support of this request the defense states:

**1. Witness information:**

Professor Tim McCormack (Australian National)  
Australian Red Cross Professor of International Humanitarian Law  
Faculty of Law, University of Melbourne  
Victoria 3010  
Australia

Office Phone: XXXX

Office Fax: XXXX

[XXXX](#)

**2. Need for translator:** None

**2. Synopsis of testimony:** It is anticipated the Mr. McCormack will testify as an expert in international humanitarian law (law of war), including but not limited to, the following:

- a. He will testify that Charges 2 and 3 do not represent violations of the law of war.
- b. He will provide an overview of the law of war and describe how the law of war operates in armed conflicts.
- c. Specifically relating to Charge 2, he will explain that the law of war protects certain people from attack during an armed conflict and prohibit certain means and methods from being employed during an armed conflict. He will testify that one group of people that are not protected, generally, from attack during an armed conflict is soldiers of either opposing forces. He will describe what conditions must occur before a soldier may be protected under the law of war such as when a soldier is wounded or surrenders.
- d. Specifically, relating to Charge 3, he will explain that Australian law imposed no duty of allegiance on Mr. Hicks during his time in Afghanistan as it relates to the armed conflict in Afghanistan. He will explain that Australia did have a similar offense to the UCMJ offense of aiding the enemy. Yet, the Australian law did not apply to Mr. Hicks. He will describe the Australian crime of treason and describe how that offense was not violated by Mr. Hicks conduct.
- e. He will describe how an armed conflict is defined under the laws of war and when the laws of war become operable. In the case of the conflict in Afghanistan, he will relate that the laws of wars became operable on 7 October 2001.

3. **Source of knowledge:** I have spoken to him previously.
4. **Use of testimony:** This witness will testify on for the motion hearing scheduled to begin 1 November 2004.
5. **Reasonable availability of witness:** Mr. McCormack says he is available and willing to come to GTMO for the hearing
6. **Alternative to live testimony:** Stipulation of Fact
7. **Is the witnesses cumulative with other witnesses:** No.
8. **Attachments:** CV of Professor Tim McCormack

By: \_\_\_\_\_  
M.D. MORI  
Major, U.S. Marine Corps

## ***CURRICULUM VITAE***

***Timothy L.H. McCormack***

### **PERSONAL DETAILS:**

**Full Name:** Timothy Lloyd Hearnden McCormack

**Current Appointments:** Foundation Australian Red Cross Professor of International Humanitarian Law  
University of Melbourne Law School

Foundation Director, Asia-Pacific Centre for Military Law  
University of Melbourne Law School

Director of Studies, Graduate Program in Military Law and Graduate Program in International Law  
University of Melbourne Law School

*Amicus Curiae* on International Law Matters to the Judges of Trial Chamber III of the International Criminal Tribunal for the Former Yugoslavia for the trial of Slobodan Milošević

**Contact Details:** Faculty of Law  
University of Melbourne  
Vic. 3010  
Australia

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### **ACADEMIC QUALIFICATIONS:**

Ph.D., Monash University, 1990. Title of thesis: 'Israel's Bombing of the Iraqi Nuclear Reactor and Self-Defence in International Law'

LL.B. with Second Class (Upper Division) Honours, University of Tasmania, 1982.

## HONOURS and AWARDS:

Mar 2003	University of Tasmania Foundation Distinguished Graduate Award for Outstanding Achievement Since Graduation;
Nov 2001	Australian Red Cross Volunteer Medal for Outstanding Service to the Organisation as Chair of the National Advisory Committee on International Humanitarian Law and as National Vice President;
Nov 1988	Inaugural Australian Recipient of the Golda Meir Postdoctoral Fellowship to the Hebrew University of Jerusalem;
Aug 1980	University of Tasmania Half Blue in Athletics.

## ACADEMIC and PROFESSIONAL APPOINTMENTS:

Sep 2003 – Jan 2004	Visiting Professor, The University of Tasmania Law School, Hobart, Tasmania;
Feb 2003	Visiting Professor, University of Virginia Law School, Charlottesville, Virginia;
Nov 2002 – present	<i>Amicus Curiae</i> on International Law matters to Trial Chamber III of the International Criminal Tribunal for the Former Yugoslavia in the trial of Slobodan Milošević;
Aug 2002 – present	Senior Academic Fellow, Ridley College, The University of Melbourne;
July 2002 – present	International Advisory Board Member, Institute for International Law of Peace and Armed Conflict, Ruhr Universität, Bochum, Germany;
June 2002 – present	International Advisory Board Member, CONCORD Centre, Law School, The College of Management Academic Studies, Rishon LeZion, Israel;
July 2001 – present	Foundation Director, Asia-Pacific Centre for Military Law, The University of Melbourne;
Jun 2000 - present	Director of Studies, Graduate Program in Military Law, The University of Melbourne;
Nov 99 – Nov 02	Vice-President, Australian Red Cross;
Jan 1999 – present	Member, Australian Foreign Minister's National Consultative Group on a Verification Protocol for the Biological Weapons Convention;
Jan 1998 – present	Member, Australian Foreign Minister's National Consultative Committee on Peace and Disarmament;
Jan 1997 – Dec 1999 Jan 2002 – Dec 2002	Associate Dean – Research, Faculty of Law, The University of Melbourne
Aug 1996 - present	Foundation Australian Red Cross Professor of International Humanitarian Law, The University of Melbourne;

Jan 1995 - present     Director of Studies, Graduate Program in International Law, The University of Melbourne;

April 1994 – Nov 02   Chair, Australian Red Cross National Advisory Committee on International Humanitarian Law;

Jan 1994                Visiting Scholar, Faculty of Law, The Hebrew University of Jerusalem;

Jul 1993 – Dec 1993   Visiting Scholar, Faculty of Law, Australian National University;

Jan 1993 - July 1996   Senior Lecturer in Law, The University of Melbourne;

Oct 1991 - Mar 1994   Member, Australian Red Cross Society National Committee on International Humanitarian Law;

Jan 1991 - Dec 1992   Lecturer in Law, The University of Melbourne;

Feb - Dec 1990        Lecturer in Law, The University of Tasmania;

Dec 1989 - Jan 1990   Visiting Lecturer in Law, Monash University;

Dec 1988 - Nov 1989   Golda Meir Postdoctoral Fellow in International Law, The Hebrew University of Jerusalem;

Jan 1987 - Nov 1988   Tutor in Law, Monash University;

Feb 1984 - Dec 1986   Ph.D. candidate, Monash University;

Feb 1983 - Jan 1984   Vice-Principal, Jane Franklin Hall, The University of Tasmania;

Feb 1982 - Jan 1983   Resident Tutor in Law, Jane Franklin Hall, The University of Tasmania.

## **PARTICIPATION in INTERGOVERNMENTAL CONFERENCES:**

### **2002:**

June: Annual Plenary Meeting of the InterAction Council (supporting former Prime Minister Rt Hon Malcolm Fraser AC) hosted by former Chancellor Helmut Schmidt;

### **2001:**

Dec: NGO member of Australian Government Delegation to the Second Review Conference of the Certain Conventional Weapons Convention, United Nations, Geneva;

Jan: Independent Expert, ICRC Meeting of Governmental Experts on the 'SIrUS Project', Jogny-sur-Vecvey, Switzerland;

### **1999:**

Nov: Member of Australian Red Cross Delegation to the XXVIIth International Red Cross Conference (4 yearly conference involving The International Committee of the Red

Cross, States Parties to the Geneva Conventions, The International Federation of Red Cross and Red Crescent National Societies and The National Societies themselves), International Conference Centre, Geneva;

May: Chair of Expert Working Group on International Humanitarian Law at the Inter-Governmental Centenary Commemoration of the First Hague International Peace Conference of 1899, The Peace Palace, The Hague;

**1998:**

Oct: Member of the International Committee of the Red Cross Delegation to the Annual Pacific Islands Law Officers' Meeting, Travelodge Hotel, Canberra;

June: Member of Australian Government Delegation to the Rome Diplomatic Conference for the Establishment of an International Criminal Court, Food and Agricultural Organisation, Rome;

April: Member of Australian Red Cross Delegation to the Asia-Pacific Regional Seminar on the Draft Statute for an International Criminal Court (jointly organised by the Australian Government, ICRC and Australian Red Cross), Department of Foreign Affairs and Trade, Canberra;

Jan: Member of Australian Government Delegation to the First Interim Conference of States Parties to the Geneva Conventions, International Conference Centre, Geneva;

**1997:**

Nov: Member of Australian Government Delegation to the 6<sup>th</sup> (Legal) Committee of the UN General Assembly for the discussion of the Draft Statute for an International Criminal Court, UN, New York;

Oct: Member of International Committee of the Red Cross Delegation to the Annual Pacific Islands Law Officers' Meeting, International Dateline Hotel, Nuku'Alofa;

**1996:**

Nov: Member of Australian Government Delegation to the 6<sup>th</sup> (Legal) Committee of the UN General Assembly for the discussion of the Draft Statute for an International Criminal Court, UN, New York;

May: Member of Australian Government Delegation to the First Conference of States Parties to the Chemical Weapons Convention, Congresgebouw, The Hague;

**1994:**

Nov: Member of the Australian Government Delegation to the 4<sup>th</sup> Asia-Pacific Regional Seminar on the Chemical Weapons Convention (organised jointly by the Indonesian Government, the Australian Government and the Provisional Technical Secretariat of the Organisation for the Prohibition of Chemical Weapons), Jakarta;

May: Member of the Australian Government Delegation to the 3<sup>rd</sup> Asia-Pacific Regional Seminar on the Chemical Weapons Convention (organised jointly by the Thai

Government, the Australian Government and the Provisional Technical Secretariat of the Organisation for the Prohibition of Chemical Weapons), Bangkok;

**1993:**

Dec: Member of the Australian Government Delegation to the Inter-Governmental Seminar on National Implementation of the Chemical Weapons Convention, Congresgebouw, The Hague;

April: Member of the Australian Government Delegation to the 2<sup>nd</sup> Asia-Pacific Regional Seminar on the Chemical Weapons Convention, Sydney;

**1992:**

June: Member of the Australian Government Delegation to the 1<sup>st</sup> Asia-Pacific Regional Seminar on the Chemical Weapons Convention, Sydney.

**PARTICIPATION IN EDITORIAL ADVISORY BOARDS:**

Co-editor in Chief (with Professor Christopher Greenwood), International Humanitarian Law Series, Kluwer Law International, The Hague;

Member of Editorial Advisory Board, *Yearbook of International Humanitarian Law*, TMC Asser Instituut, The Hague;

Member of Editorial Advisory Board, *Melbourne Journal of International Law*, Faculty of Law, The University of Melbourne;

Member of Editorial Advisory Board, *International Criminal Law Review*, Kluwer Law International, The Hague;

Member of Editorial Advisory Board, *Journal of Conflict and Security Law*, Oxford University Press, Oxford;

Member of Editorial Advisory Board, *Pacifica Review*, Institute for Peace Research, La Trobe University, Melbourne.

**OTHER PROFESSIONAL AFFILIATIONS:**

Member, Australian and New Zealand Society of International Law

Member, American Society of International Law

**PUBLICATIONS:**

**Books (authored and edited):**

- McCormack, T.L.H. and Saunders, C.A. (eds) *A Remarkable Public Life: Essays in Honour of Sir Ninian Stephen*, Melbourne University Press: Melbourne (forthcoming 2005);
- McCormack, T.L.H., Tilbury, M. and Triggs, G.T. (eds) *A Century of War and Peace: Asia-Pacific Perspectives on the Centenary of the 1899 Hague Peace Conference*, Kluwer Law International: The Hague (2001) pp. 292 + xiv;
- Durham, H. and McCormack, T.L.H. (eds) *The Changing Face of Conflict and the Efficacy of International Humanitarian Law*, Kluwer Law International: The Hague (1999) pp. 225 + xxvi;
- McCormack, T.L.H. and Simpson, G.J. (eds) *The Law of War Crimes: National and International Approaches*, Kluwer Law International: The Hague (1997) pp. 262 + xxvii;
- McCormack, T.L.H. *Self-Defence in International Law: The Israeli Raid on the Iraqi Nuclear Reactor*, Magnes Press: Jerusalem with St. Martin's Press: New York (1996) pp. 339 + viii.

### **Chapters in Books:**

- Howard, J. and McCormack T.L.H., 'Australia's Implementation of the *Rome Statute*' in M. du Plessis (ed), *Commonwealth Guide to International Criminal Law*, Commonwealth Secretariat: London (in press);
- McCormack, T.L.H. 'Use of Force' in S. Blay, R. Piotrowicz and B. Martin Tsamenyi (eds) *Public International Law: An Australian Perspective (2<sup>nd</sup> ed.)*, Oxford University Press: Oxford (in press);
- McCormack, T.L.H., 'The Importance of Effective Enforcement of International Humanitarian Law' in Liesbeth Lijnzaad, Johanna van Sambeek and Bahia Tahzib-Lie (eds), *Making the Voice of Humanity Heard: Essays on Humanitarian Assistance and International Humanitarian Law in Honour of HRH Princess Margriet of The Netherlands*, Martinus Nijhoff Publishers: Leiden (2004) 319-338;
- McCormack, T.L.H., 'Crimes Against Humanity' in Dominic McGoldrick, Peter Rowe and Eric Donnelly (eds), *The Permanent International Criminal Court: Legal and Policy Issues*, Hart Publishing: Oxford (2004) 179-202;
- McCormack, T.L.H. 'Their Atrocities and Our Misdemeanours: The Reticence Of States to Try Their Own Nationals for International Crimes' in Mark Lattimer and Philippe Sands (eds) *Justice for Crimes Against Humanity*, Hart Publishing: Oxford (2003), 107-42;
- McCormack, T.L.H., 'Reply to Louise Arbour' in Cheryl Saunders and Katherine Le Roy (eds), *The Rule of Law*, The Federation Press: Sydney (2003), 136-142;
- McCormack, T.L.H., 'Australia's Legislation for the Implementation of the *Rome Statute*' in Matthias Neuner (ed), *National Legislation Incorporating International Crimes: Approaches of Civil and Common Law Countries*, Berliner Wissenschafts-Verlag: Berlin (2003) 65-82;
- Kelly, M.J. and McCormack, T.L.H., 'International and Regional Action with Regard to Conflicts in Multicultural Societies' in R. Blindenbacher and A. Koller (eds) *Federalism in a Changing World – Learning From Each Other*, McGill-Queen's University Press: Montreal (2003), 278-307;
- McCormack, T.L.H. 'War Crimes' in Valerie Tomaselli and Sonja Matanovic (eds.) *World at Risk: A Global Issues Sourcebook*, CQ Press: Washington DC (2002) 585-603;



- Mathews, R.J. and McCormack, T.L.H. 'The Relationship Between International Humanitarian Law and Arms Control' in Durham H. and McCormack, T.L.H. (eds) *The Changing Face of Conflict and the Efficacy of International Humanitarian Law*, Kluwer Law International: The Hague (1999) 65-98;
- McCormack, T.L.H. 'Use of Force' in S. Blay, R. Piotrowicz and B. Martin Tsamenyi (eds) *Public International Law: An Australian Perspective*, Oxford University Press: Melbourne (1997) 238-270;
- Mathews, R.J. and McCormack, T.L.H. 'Australian Security, Weapons of Mass Destruction and International Law' in A. Bergin and S. Scott (eds) *International Law and Australian Security*, Australian Defence Studies Centre: Canberra (1997) 125-146;
- McCormack T.L.H. and Simpson, G.J. 'Achieving the Promise of Nuremberg: A New International Criminal Law Regime?' in *The Law of War Crimes: National and International Approaches*, Kluwer Law International: The Hague (1997) 229-254;
- McCormack, T.L.H. 'From Sun Tzu to the Sixth Committee: The Evolution of an International Criminal Law Regime' in McCormack and Simpson (eds) *The Law of War Crimes: National and International Approaches*, Kluwer Law International: The Hague (1997) 31-64;
- McCormack, T.L.H. and Reicher H. 'International Legal Personality' in H. Reicher (ed.) *Australian International Law: Cases and Materials*, Law Book Co. Sydney (1995) 116-201;
- McCormack, T.L.H. 'The Use of Force' in H. Reicher (ed.) *Australian International Law: Cases and Materials*, Law Book Co.: Sydney (1995) 1028-1072;
- Mathews, R.J. and McCormack, T.L.H. 'Verification of the Chemical Weapons Convention: National Implementation Requirements' in J.B. Poole and R. Guthrie (eds), *Verification 1995: Arms Control, Peacekeeping and the Environment*, Westview Press: Boulder (1995) 180-192.

#### **Articles in Refereed Journals:**

- Kelly, M.J., McCormack, T.L.H., Muggleton, P. and Oswald, B.M. 'Legal Aspects of Australia's Involvement in the International Force for East Timor' (2001) 83 *International Review of the Red Cross* 101-140;
- McCormack, T.L.H., 'What's in an Emblem?: Humanitarian Assistance Under Any Other Banner Would be as Comforting' (2000) 1 *Melbourne Journal of International Law* 175-184;
- McCormack, T.L.H. and Robertson, S. 'Jurisdictional Aspects of the Rome Statute for a New International Criminal Court' (1999) 23 *Melbourne University Law Review* 635-667;
- McCormack, T.L.H. and Simpson, G.J. 'Simulating Multilateral Treaty Making in the Teaching of the Law of International Organisations' (1999) 8 *Legal Education Review* 61-82;
- Doherty, K.L. and McCormack, T.L.H. 'Complementarity as a Catalyst for Comprehensive Domestic Penal Legislation' (1999) 5 *University of California, Davis Journal of International Law and Policy* 147-180;

- Mathews, R.J. and McCormack, T.L.H. 'The Influence of Humanitarian Principles in the Negotiation of Arms Control Regimes' (1999) 81 *International Review of the Red Cross* 331-352;
- McCormack, T.L.H. 'The 'Sandline Affair': Papua New Guinea Resorts to Mercenarism to End the Bougainville Conflict' (1998) 1 *Yearbook of International Humanitarian Law* 292-300;
- McCormack, T.L.H. 'From Solferino to Sarajevo: A Continuing Role for International Humanitarian Law?' (1997) 21 *Melbourne University Law Review* 621-649;
- McCormack, T.L.H. 'Selective Reaction to Atrocity: War Crimes and the Development of International Criminal Law' (1997) 60 *Albany Law Review* 681-732;
- McCormack, T.L.H. 'A *Non-Liquet* on Nuclear Weapons: The ICJ Avoids the Application of General Principles of International Humanitarian Law' (1997) 316 *International Review of the Red Cross* 76-91;
- Mathews, R.J. and McCormack, T.L.H. 'The Resolution of Disputes Under the Chemical Weapons Convention (1995) 16 *Contemporary Security Policy* 396-420;
- McCormack, T.L.H. and Simpson, G.J. 'A New International Criminal Law Regime?: The Sixth Committee Debates The International Law Commission's Draft Statute for an International Criminal Court' (1995) XLII *Netherlands International Law Review* 177-206;
- Mathews, R.J. and McCormack, T.L.H. 'Entry into Force of the Chemical Weapons Convention: National Requirements and Prospective Timetable' (1995) 26 *Security Dialogue* 93-107;
- McCormack, T.L.H. and Simpson, G.J. 'The International Law Commission's Draft Code of Crimes Against the Peace and Security of Mankind: An Appraisal of the Substantive Provisions' (1994) 5 *Criminal Law Forum* 1-55;
- Letts, M., Mathews R.J., McCormack T.L.H. and Moraitis, C. 'The Conclusion of the Chemical Weapons Convention: An Australian Perspective' (1993) 14 *Arms Control* 311-332;
- McCormack, T.L.H. 'Some Australian Contributions to Chemical Weapons Non-Proliferation and Disarmament' (1992) 14 *Australian Yearbook of International Law* 157-178;
- McCormack, T.L.H. 'Anticipatory Self-Defence in the Legislative History of the U.N. Charter' (1991) 25 *Israel Law Review* 1-42;
- McCormack, T.L.H. 'H.V. Evatt at San Francisco: A Lasting Contribution to International Law' (1990-91) 13 *Australian Yearbook of International Law* 92-105;
- McCormack, T.L.H. 'International Law and the Use of Chemical Weapons in the Gulf War' (1990-91) 21 *California Western International Law Journal* 1-30.

### **Book Reviews in Refereed Journals:**

- Cassese A., Gaeta P. and Jones J.R.W.D. (eds), *The Rome Statute of the International Criminal Court: A Commentary*, (2003) 4 *Melbourne Journal of International Law* 341-345;
- Sassòli, M. and Bouvier, A. 'How Does Law Protect in War?: Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law', (2002) 1 *Netherlands International Law Review* 291-294;

- Meron, T. 'War Crimes Law Comes of Age', (2000)XLVII *Netherlands International Law Review* 97-100;
- Weiss, T.G. (ed) 'The United Nations and Civil Wars' (1999)11 *Pacifica Review* 329-332;
- Dinstein, Y. and Tabory, M. (eds) 'War Crimes in International Law', (1998)18 *Australian Yearbook of International Law* 107-110;
- White, N.G. 'The Law of International Organisations', (1998)347 *The Round Table: The Commonwealth Journal of International Affairs* 383-384;
- Bassiouni, M.C. and Manikas, P. (eds.) 'The Law of the International Criminal Tribunal for the Former Yugoslavia', (1998) XLV *Netherlands International Law Review* 435-439;
- Bassiouni, M. C. 'Crimes Against Humanity in International Law', (1996)17 *Australian Yearbook of International Law* 266-269;
- Woodliffe, J. 'The Peacetime Use of Foreign Military Installations under Modern International Law', (1994)15 *Australian Yearbook of International Law* 321-323;
- Lapidoth, R. and Hirsch, M. (eds.) 'The Arab-Israeli Conflict and its Resolution: Selected Documents', (1992)14 *Australian Yearbook of International Law* 316-318;
- Janis, M.W. (ed.) 'The Influence of Religion on the Development of International Law', (1993)21 *International Journal of Legal Information* 86-89;
- Bustelo, M.R. and Alston, P. (eds) 'Whose New World Order: What Role for the United Nations?', (1988/89)12 *Australian Yearbook of International Law* 303-306;
- Cassese, A. 'Human Rights in a Changing World', (1992)18 *Melbourne University Law Review* 493-494;
- Meyrowitz, E. 'Regulation of Nuclear Weapons: The Relevance of International Law', (1991)19 *International Journal of Legal Information* 147-149;
- Butler, W.E. (ed.) 'The Non-Use of Force in International Law', (1991)18 *International Journal of Legal Information* 225-228.

#### **Other Contributions to Refereed Journals:**

- McCormack, T.L.H. 'Australia' in 'Correspondents' Reports', (2000)3 *Yearbook of International Humanitarian Law* 414-419;
- McCormack, T.L.H. 'Solomon Islands' in 'Correspondents' Reports', (2000)3 *Yearbook of International Humanitarian Law* 577-578;
- McCormack, T.L.H. 'Australia' in 'Correspondents' Reports', (1999)2 *Yearbook of International Humanitarian Law* 329-331;
- McCormack, T.L.H. 'New Zealand' in 'Correspondents' Reports', (1999)2 *Yearbook of International Humanitarian Law* 393-394;
- McCormack, T.L.H. 'Australia' in 'Correspondents' Reports', (1998)1 *Yearbook of International Humanitarian Law* 407-408;

McCormack, T.L.H. 'Papua New Guinea' in 'Correspondents' Reports', (1998)1 *Yearbook of International Humanitarian Law* 488-491.

### **Consultancy Reports:**

McCormack, T.L.H., *Prosecutor v. Slobodan Milošević*, 'Amicus Curiae Submissions on Self-Defence as it Arises in the Bosnia-Herzegovina Part of the Case as Stipulated in the Order of the Chamber to the Amicus of 23 July 2003', Case No. IT-02-54-T, 01 March 2004, pp. 1-28;

McCormack, T.L.H., *Prosecutor v. Slobodan Milošević*, 'Amicus Curiae Submissions on Self-Defence as it Arises in the Croatia Part of the Case as Stipulated in the Order of the Chamber to the Amicus of 23 July 2003', Case No. IT-02-54-T, 11 February 2004, pp. 1-33;

McCormack, T.L.H., 'Duress as a Defence to the Perpetration of a War Crime or Crime Against Humanity', Clothier Anderson and Associates, Melbourne, February 2004, pp. 1-15;

McCormack, T.L.H., *Prosecutor v. Slobodan Milošević*, 'Amicus Curiae Submissions on Self-Defence as it Arises in the Kosovo Part of the Case as Stipulated in Part (a) of the Order of the Chamber to the Amicus of 11 December 2002', Case No. IT-02-54-T, 30 October 2003, pp. 1-36;

McCormack, T.L.H., *Prosecutor v. Slobodan Milošević*, 'Amicus Curiae Observations *Proprio Motu* on Relevant Issues of International Law', Case No. IT-02-54-T, 21 July 2003, pp. 1-4;

McCormack, T.L.H., *Prosecutor v. Slobodan Milošević*, 'Amicus Curiae Submissions on the Law of Self-Defence as Stipulated in Parts (b) and (c) of the Order of the Chamber to the Amicus of 11 December 2002', Case No. IT-02-54-T, 14 July 2003, pp. 1-49;

McCormack, T.L.H. 'International Law Aspects in Extradition Proceedings Against Konrads Kalejs', Expert Opinion for the Commonwealth Director of Public Prosecutions, Melbourne, March 2001, pp. 1-8;

McCormack, T.L.H. 'War Crimes in Internal Armed Conflicts and Elements of a Crime Against Humanity', Department of Immigration and Multicultural Affairs, Canberra, November 1999, pp. 1-16;

McCormack, T.L.H. 'Complicity in, or Aiding and Abetting, War Crimes or Crimes Against Humanity', Erskine, Rodan and Associates, Melbourne, March 1998, pp. 1-15;

McCormack, T.L.H. 'National Implementation of International Humanitarian Law Instruments in South Pacific Island States', International Committee of the Red Cross, Geneva, February 1998, pp. 1-20;

McCormack, T.L.H. 'NPT, SPNPFZ and CWC: Facilitating Action by Vanuatu', Department of Foreign Affairs and Trade, Canberra, April 1995, pp. 1-12;

McCormack, T.L.H. 'Chemical Weapons Regional Initiative Visit to South Pacific Capitals', Department of Foreign Affairs and Trade, Canberra, June 1994, pp. 1-18;

Mathews R.J. and McCormack T.L.H. 'Illustrative Model Legislation for the Implementation of the Chemical Weapons Convention Into Domestic Law: Text and Explanatory Memorandum', Department of Foreign Affairs and Trade, Canberra, September 1993, pp.

1-36 (subsequently tabled at the Preparatory Commission for the Chemical Weapons Convention in The Hague as a Working Paper: Doc. No. PC-IV/A/WP.10, 23 September 1993);

McCormack, T.L.H. and Simpson G.J. 'The Draft Code of Crimes Against the Peace and Security of Mankind: An Analysis of the Relationship Between the Draft Code's Specific Crimes and Existing International Law', Legal Office, Department of Foreign Affairs and Trade, Canberra, November 1992, pp. 1-41;

McCormack, T.L.H. 'Towards a Chemical Weapons Convention: Australian Perspectives on the Outstanding Issues to Implementation', Department of Foreign Affairs and Trade, Canberra, November 1991, pp. 1-96.

### **Unrefereed Published Conference Proceedings:**

Kelly, M.J. and McCormack, T.L.H. 'International and Regional Action With Regard to Conflicts in Multicultural Societies', *Federalism in a Changing World: Learning From Each Other*, Conference Reader for the International Conference on Federalism, St Gallen, 27-30 August 2002, 363 - 406;

McCormack, T.L.H. 'An Introduction to Treaties: What They Are and Where to Find Them', (1996)4 *Australian Law Librarian* 265-278;

McCormack, T.L.H. 'National Implementing Legislation for the Chemical Weapons Convention' *Proceedings of the Regional Seminar on National Implementation of the Chemical Weapons Convention*, Jakarta, 28-30 November 1994, Provisional Technical Secretariat of the Organisation for the Prohibition of Chemical Weapons Occasional Paper No. 9, 95-104;

Mathews, R.J. and McCormack, T.L.H., 'Disputes Between the Inspected State Party and the Inspection Team' *Hague Academy of International Law Colloquium on the Chemical Weapons Convention*, The Hague, 24-26 November 1994, 509-535;

McCormack, T.L.H. 'New Standards in the Monitoring of Multilateral Arms Control and Disarmament Treaties', *Proceedings of the Second Annual Meeting of the Australian and New Zealand Society of International Law*, A.N.U., Canberra, 27-29 May 1994, 18-25;

McCormack, T.L.H. 'National Implementing Legislation for the Chemical Weapons Convention', *Proceedings of the Regional Seminar on National Implementation of the Chemical Weapons Convention*, Bangkok, 9-10 May 1994, Provisional Technical Secretariat of the Organisation for the Prohibition of Chemical Weapons Occasional Paper No. 4, 123-135;

McCormack, T.L.H. 'The Australian Approach to National Implementation of the Chemical Weapons Convention', *Proceedings of the 88th Annual Meeting of the American Society of International Law*, Washington D.C., 5-8 April 1994, 233-238;

McCormack T.L.H. 'Australia: National Implementation of the Chemical Weapons Convention', *Proceedings of the Seminar on National Implementation*, The Hague, 18 December 1993, Provisional Technical Secretariat of the Organisation for the Prohibition of Chemical Weapons Occasional Paper No. 2, 149-153;

McCormack T.L.H. 'The United Nations Draft Code of Crimes Against the Peace and Security of Mankind: An Appraisal of the Substantive Provisions', *Proceedings of the First Annual Meeting of the Australian and New Zealand Society of International Law*, A.N.U., Canberra, 28-30 May 1993, 36-48;

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DEPARTMENT OF DEFENSE  
OFFICE OF THE CHIEF PROSECUTOR  
1610 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1610

October 14, 2004

MEMORANDUM FOR DETAILED DEFENSE COUNSEL ICO DAVID MATTHEW HICKS

SUBJECT: Witness Request for Tim McCormack – U.S. v. Hicks

1. On October 8, 2004 the Defense Counsel in U.S. v. Hicks requested the above named witness be produced for live testimony at Guantanamo Bay, Cuba. The Defense request for Professor McCormack indicates that he will provide generalized testimony regarding how “Charges 2 and 3 do not represent violations of the law of war” and “an overview of the law of war and describe how the law of war operates in armed conflicts.” (Paragraph 3).

2. Presiding Officer’s Memorandum (POM) Number 10, dated October 4, 2004, regarding witness requests provides:

c. Paragraph 3: {Synopsis of witness’ testimony}. What the requester believes the witness will say. *Note:* Unnecessary litigation often occurs because the synopsis is insufficiently detailed or is cryptic. A well-written synopsis is prepared as though the witness were speaking (first person), and demonstrates both the testimony’s relevance and that the witness has personal knowledge of the matter offered.

3. The Defense Counsel’s request indicates the general subject matter of the testimony but does not provide the information required by POM Number 10. As written, your request is denied. If the defense produces information in accordance with POM Number 10, the Prosecution will reconsider the request at that time.

4. The Prosecution further objects to the testimony of Professor McCormack for the reasons set out in the document entitled: “Prosecution Response to Defense Witness Requests of 8 October 2004 and Motion to Exclude Attorney and Legal Commentator Opinion Testimony,” served upon Defense on October 13, 2004 and attached hereto.

Lieutenant Colonel, U.S. Marine Corps  
Prosecutor  
Office of Military Commissions

Attachment:  
As stated





**From:** XXXX. CIV (L)

**Sent:** Thursday, October 28, 2004 1:56 PM

**To:** 'Mori, Michael, MAJ, DoD OGC'; Swann, Robert, COL, DoD OGC; XXXX, LtCol, DoD OGC; Will Col DoD OGC Gunn (Gunn, Will, Col, DoD OGC); XXXX; XXXX; XXXX, COL, DoD OGC; XXXX, MSG, DoD OGC (XXXX); Lippert, Jeffery MAJ Bamberg Law Center; XXXX, MAJ, DoD OGC (XXXX); Hodges, Keith H. CIV (L); Brownback, Peter E. COL (L)

**Subject:** United States v. Hicks, Decision of the Presiding Officer, D26

United States v. Hicks

Decision of the Presiding Officer, D26

The Presiding Officer has denied the request for production of Tim McCormick as a witness. The Presiding Officer did not find that he is necessary. See Military Commission Order 1, section 5H. Accordingly, this request has been moved from the active to the inactive section of the filings inventory in accordance with POM 12. See also paragraph 8, POM 12.

By Direction of the Presiding Officer

XXXX

Assistant to the Presiding Officers

XXXX

Voice: XXXX

Fax: XXXX

UNITED STATES OF AMERICA	)	
	)	
	)	<b>DEFENSE MOTION -</b>
	)	<b>THE ENTIRE COMMISSION</b>
v.	)	<b>TO GRANT PRODUCTION OF</b>
	)	<b>WITNESS DENIED IN D 26</b>
	)	
DAVID HICKS	)	<b>(Tim McCormack)</b>
	)	
		29 October 2004

The Defense previously requested that name of witness be produced. The request was denied by the Presiding Officer under the provisions of Military Commission Order 1, section 5H.

The Defense requests the Commission direct the production of the witness, and that the Commission consider the following previously made filings, and the attachments thereto, per the Filings Inventory D26, in making its determination.

- a. Motion by the defense requesting Mr. McCormack.
- b. Decision of the Presiding Officer denying the witness.
- c. The government response to D26, if any.

By: \_\_\_\_\_  
M.D. MORI  
Major, U.S. Marine Corps